



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

September 19, 2003

Mr. Jerry Jolley
Assistant Chief
Leander Police Department
P.O. Box 319
Leander, Texas 78646-0319

OR2003-6610

Dear Mr. Jolley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187939.

The Leander Police Department (the "department") received a request for all offense or incident reports involving named individuals, one of whom is the requestor. You argue that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state that "[t]he requestor is seeking all information involving certain individuals (criminal history) and that information...falls under the 552.101 exception." Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning certain individuals. However, because the named individuals are not identified as suspects, defendants or arrestees in any of the submitted information, we find that this information is not protected by common law privacy. *See id.*

You also claim that the submitted information is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108 provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal records or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; or

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). Generally, a governmental body claiming section 552.108(a)(1) or (b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Likewise, a governmental body claiming section 552.108(a)(2) or (b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. First, you have not stated which portions of the requested information pertain to an ongoing criminal investigation or prosecution. Additionally, while you state that "the material . . . does contain investigative information and police investigative methods, and if released could hinder these pending investigations or future investigations," you have failed to explain how the release of this information would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1), (b)(1). Thus, you have not met your burden under section 552.108(a)(1) or (b)(1). You also state that "552.108(b) applies to certain excepting [sic] contents of [the submitted information], in that the case has concluded without conviction or deferred adjudication and contains unadjudicated suspect information." Again, you have not identified which information is excepted under section 552.108(b). Thus, you have not met

your burden under section 552.108(a)(2) or (b)(2). Therefore, the department may not withhold the requested information under section 552.108.

We note that the submitted information contains Texas driver's license numbers and a social security number that are excepted from disclosure under sections 552.130 and 552.101 of the Government Code respectively. A social security number is excepted from required public disclosure under section 552.101¹ in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Section 552.130 excepts from disclosure information that relates to a driver's license issued by an agency of this state. However, because these provisions protect a person's privacy, the requestor has a special right of access under section 552.023 to her own information. Gov't Code § 552.023 (person or person's authorized representative has special right of access to information held by governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests). The submitted information also contains a driver's license number that does not belong to the requestor. This information, which we have marked, must be withheld under section 552.130.

In summary, the department must withhold the marked driver's license information under section 552.130. All remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Heather R. Rutland
Assistant Attorney General
Open Records Division

HRR/sdk

Ref: ID# 187939

Enc: Submitted documents

c: Ms. Beverly J. Deal
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Leander, Texas 78641
(w/o enclosures)